> [Givaudan Fragrances Corp., 227 N.J. at 338 (quoting Elat, Inc. v. Aetna Casualty & Surety Co., 280 N.J. Super. 62, 67 (App. Div. 1995)).]

Therefore, if an insurer does not consent to the assignment of a policy, "[w]here the policy prohibits an assignment, an assignment without the insurer's consent invalidates it" unless the assignment occurs after the loss. Elat, Inc., 280 N.J. Super. at 66 (quoting Flint Frozen Foods, Inc. v. Firemen's Ins. Co. of Newark, 12 N.J. Super. 396, 400-01 (Law Div. 1951)). This notion is grounded in the idea of the freedom of contract, and the "corollary right of the insurer to deal only with the party with whom it contracts, outweighs the general policy favoring the free alienability of choses in action." Parkway Ins. Co. v. N.J. Neck & Back, 330 N.J. Super. 172, 188 (Sup. Ct. 1998).

Whereas plaintiff may be correct in her assertion that the risk had not changed, as defendant knew that it was insuring a two-family rental property, ownership still remains a material part of the contract, in which the anti-assignment clause, supported by N.J.S.A 17:36-5.19 cannot be ignored. Regardless of if that information was not used to rate the premium, the policy sets forth, in multiple places, that a dwelling policy cannot be acquired by an entity or business. Even if plaintiff is correct in that she did not have an obligation under the policy to advise defendant of the deed transfer, she did have an obligation to notify defendant if she requested an assignment of the policy. Plaintiff did not seek consent to transfer the policy, nor was it provided.

III. Even without plaintiff's breach of the anti-assignment clause, plaintiff did not retain an insurable interest

Aside from the anti-assignment policy, plaintiff contends that she retained an insurable interest at the time of fire because she was always the named insured and there is no requirement that the insured be named on the deed to recover. Defendant argues that plaintiff did not maintain an insurable interest in the property once she transferred her ownership to a business entity.

To support this position, defendant relies on Shotmeyer v. New Jersey Realty Title Ins. Co., which involved two brothers who created a general partnership to purchase real estate and subsequently, title insurance for the 24-acre farm. 195 N.J. 72, 78-79 (2008). Ten years later, the brothers formed a limited partnership consisting of three partners: the two brothers individually as limited partners and a new corporation the brothers formed. Id. at 78. Afterwards, the brothers learned of two judgments that declared half the farm's acreage belonged to a neighbor and not the partnership. Id. at 79. A claim was filed against their title insurance company which denied coverage based on the lack of an insurable interest. Id. at 79-80. The Court held that the transfer of the property to a limited partnership was a "deliberate and voluntary conveyance to a separate legal entity" and therefore the property belonged to the limited partnership and not the brothers. Id. at 81. The Court found that individual insureds, and limited liability companies they own, are separate entities from each other. Id. at 77, 85. Because the transfer of assets to a corporation offers particular business and personal advantages to the brothers, such as protection from personal liability, the brothers could not recover as named insureds under the title insurance policy. Id. at 85-86.

In order to sustain recovery under a policy for property damage, one must have an insurable interest in the property. Id. at 85-87. "Although it is not necessary to have legal or equitable title to have an insurable interest in real estate, it is clear that the interest in the property must have some pecuniary value and that the party who seeks to recover bears the burden of proving that value." Arthur Anderson, LLP v. Federal Ins. Co., 416 N.J. Super. 334, 349 (App. Div. 2010). To determine insurable interest, the court evaluates "whether the insured has such a right, title or interest therein, or relation thereto, that he will be benefited by its preservation and continued existence or suffer a direct pecuniary loss from its destruction or injury by the peril insured

against." Balentine v. New Jersey Ins. Underwriting Ass'n, 406 N.J. Super. 137, 141-42 (App. Div. 2009) (quoting Hyman v. Sun Ins. Co., 70 N.J. Super. 96, 100 (App. Div. 1961) (emphasis added)).

Individuals do not lose insurable interest merely because of a lack of title in the property. However, the critical difference in the case before this court and the cases plaintiff cites in support of her argument, is that even without title, she did not retain responsibility for any debts, liabilities, and pecuniary interests in the property.[3]

Regardless of whether plaintiff is the named insured, she transferred her ownership to the limited liability company. "An assignment is the transfer of the whole interest of the assignor." Brown v. Wildwood Volunteer Fire Co. No. 1., 228 N.J. Super. 556, 563 (Super Ct. 1988). "An assignee does not retain some control or interest in a lease." Ibid. In addition to no longer owning the property, plaintiff did not live at the property, nor did she retain a mortgage, directly receive rental payments, and was not personally responsible for any liabilities connected to the house. Stated differently, it cannot be true that plaintiff can both purchase the property and then assign her interest in the property to a limited liability company for the benefit of reducing her personal risks and other liabilities, while also still receiving insurance coverage providing lower premiums and other benefits for individuals.

IV. Defendant did not waive fraud in its application and retained the right to disclaim coverage

On October 8, 2019, the authorized third-party administrator for defendant advised plaintiff that defendant was investigating the matter "under a full reservation of all its rights" under the

[3] See Balentine, 406 N.J. Super. at 139 (A record owner, responsible for taxes and tort liability to visitors and occupants, had an insurable interest); Miller v. New Jersey Ins. Underwriting Ass'n, 82 N.J. 594, 602 (1980) (Former owners and mortgagees of properties upon which the city obtained title through foreclosure proceedings for nonpayment of real estate taxes had insurable interest); Hyman, 70 N.J. Super. at 99 (assignee of mortgage payment had insurable interest in mortgagee's property in the amount of the payment due).

policy. Specifically, the letter detailed "[t]here are underwriting issues associated with this loss and we are concerned that coverage for the claim as submitted maybe questionable under the policy." The letter "is not, and should not be construed as, a waiver of any terms, conditions, exclusions or other provisions of the policy" and includes defendant's right to amend grounds for a disclaimer of coverage if "subsequent information indicates that such action is warranted." At the close of the investigation and after the denial letter was sent, defendant mailed the policy recission letter dated February 11, 2020, with a check representing a refund of the premiums paid for the insurance policy.

Plaintiff admits she received the letter, but argues the letter cannot be considered because it has not been properly authenticated by a defendant representative with personal knowledge and is therefore inadmissible hearsay. Plaintiff also alleges that because she has not received a refund, defendant has waived fraud in its application.

The argument ignores the "basic mailbox rule" in which New Jersey law recognizes a presumption that mail properly addressed, stamped, and posted, was received by the party to whom it was addressed. New Century Fin. Servs. v. Nason, 367 N.J. Super. 17, 22-25 (App. Div. 2004). "Authorizing the use of mail as a means of paying premiums, the carrier constituted the postal authorities as its agent. Okosa v. Hall, 315 N.J. Super. 437, 441 (App. Div. 1998). The courts respect the presumption of Rule 1:6-3(c) that ordinary mailings were received because there was no indication the letter was returned for any of the reasons stated in Rule 6:2-3(d)(4). Nason, 367 N.J. Super. at 25-26. Plaintiff cannot point to any reply correspondence questioning the whereabouts of the check, if indeed it was not within the envelop. Further, defendant did not "voluntarily relinquish . . . a known right evidenced by a clear, unequivocal and decisive act."

State v. Mauti, 208 N.J. 519, 539 (2012). Defendant never intentionally waived the right to rescind the policy, nor was it known that plaintiff had not deposited the check.

V. Reformation of the contract is not applicable as there was no mutual mistake nor fraud or unconscionable conduct on behalf of defendant

In plaintiff's final point, she seeks reformation of the insurance contract. Because there is no showing of a "mutual mistake" or plaintiff's mistake accompanied by fraud or unconscionable conduct of defendant, this claim fails as a matter of law.

Reformation, distinguishable from the rescission of a contract occurs where the minds of the parties have met contractually, but a mistake has been made in writing out the contract in expressing the meaning "which makes the parties "enter into a contract which they have not entered into[.]" Ordway v. Chace, 57 N.J. Eq. 478, 488 (Ch. 1898). "Reformation is the means by which the instrument is made to conform to the intention of the parties. It is applicable to cases of mistake and fraud." Sav. Inv. & Tr. Co. v. Conn. Mut. Life Ins. Co., 17 N.J. Super. 50, 56 (Super. Ct. 1951) (quoting Santamaria v. Shell Eastern Petroleum Products, Inc., 116 N.J. Eq. 26, 29 (Ch. 1934) (internal citations omitted)). "Reformation on the ground of mistake is not granted in equity where the mistake is the result of the complaining party's own negligence." Millhurst Milling & Drying Co. v. Auto. Ins. Co., 31 N.J. Super. 424, 434 (App. Div. 1954).

In support of defendant's position, defendant argues the company's officers did not discover plaintiff transferred her ownership before the fire. After the investigation revealed such facts, the policy was rescinded. As the situation appears to defendant, the premium was paid by plaintiff, and the intention of the parties, was entirely carried out by retaining the provisions set forth in the policy in its initial form, as was relied upon by the insurance company to renew the policy. As such, there was no mutual mistake, nor was defendant's actions fraudulent or unconscionable as their policy outlines their ability to rescind.

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CONFIDENTIAL: NOT FOR REPRODUCTION.

As a Judicial Law Clerk, I prepared the attached memorandum for the panel of judges on the Appellate Division in New Jersey. To preserve confidentiality, all individual names and locations have been changed, and portions have been redacted. I have received permission from my employer to use this memorandum as a writing sample.

Background Facts

L.T. is the subject of an internal investigation regarding a complaint of "conduct unbecoming an officer" in which an anonymous person posted disparaging remarks on a social media platform aimed at multiple municipal employees. Pursuant to General Order 18, which allows members to carry personal cell phones, but conditions that in the event an "administrative investigation indicates improper use" the billing records of that device may be requested for review, L.T. was ordered to provide his billing records regarding his personal cell phone. Before the Appellate Division, NA, a representative organization for officers in the department, argued on behalf of L.T., that the trial court's decision should be reversed and L.T.'s request for a permanent injunction to produce his billing records should be granted due to Fourth Amendment considerations and First Amendment policies regarding free speech.

DISCUSSION

VI. The IAPP and General Orders clearly define the policy and procedures of internal investigations and mandatory officer involvement

NA's constitutional arguments rest upon the Fourth Amendment's prohibition against unreasonable searches and seizures, as applied to the States through the Fourteenth Amendment, which is also nearly identical to the language found in Article I Paragraph 7 of the New Jersey Constitution. In the AG's IAPP, Section Seven addresses searches and seizures and explains "in an internal affairs investigation, the Fourth Amendment applies to any search the employing agency undertakes, § 7.8.1, but the law is "somewhat less restrictive" during an "administrative investigation" because "the employing agency does not need a warrant to conduct a search [though] the investigator should exercise great care when search[ing] . . . items in which the subject officer has a high expectation of privacy." IAPP § 7.8.3. The AG also advises the department to issue a directive regarding the right to search property and explains "[t]his notification will help defeat an assertion of an expectation of privacy[.]" IAPP § 7.8.7.

On March 23, 2018, the PD issued G.O 18 with Section 10(b) outlining in the event that an administrative investigation indicates improper use, the billing records of that device may be requested for review. In signing the General Order, the Section provides that any officer who willfully violates "any police regulation or order, the department may consider [such action] sufficient cause for disciplinary action." NA asserts the General Order does not diminish L.T.'s expectation of privacy, and because the provision uses the term "may" L.T. can refuse to comply.

Unlike AG Directives and the IAPP, there is no statute that gives a General Order promulgated by the Police Chief the force of law. Paff v. Ocean Cty. Prosecutor's Office, 235 N.J.

1, 20 (2018). See Lyndhurst, 229 N.J. at 565 (describing N.J.S.A. 52:17B-97 to -117 empowers a municipality to create a police department but does not grant a police chief authority analogous to the AG's statutory power to adopt directives binding in law). However, the General Order is grounded in multiple sections of the IAPP, which does have the force of law. First, the IAU has an obligation to investigate and review any allegation of employee misconduct that is a potential violation of an AG directive and the agency's rules. IAPP § 4.1.3. Specifically, the obligation includes "not only acts of misconduct that are alleged to have occurred while the subject officer was on duty, but also acts of misconduct that are alleged to have occurred outside the employing agency's jurisdiction or while the [the] officer was off-duty." Ibid. Second, because "police officers have the same duty and obligation to their employer as any other employee . . . the officer has a duty to cooperate during an administrative interview," and "failure to fully cooperate can form the basis for disciplinary action." IAPP § 8.0.4. "In short, no 'right to remain silent' exists in administrative investigations" even when the answers may implicate them in violation of agency rules. IAPP § 8.4.1.

Even if NA argues this is beyond answering questions but rather is an order to share personal information, Section 8.0.8. states that "officers who have been compelled by order to produce incriminating information with the belief that a failure to do so will result in termination or other serious disciplinary action" can still be compelled to provide answers during an internal investigation if those answers are used as evidence in a disciplinary proceeding. IAPP § 8.0.8. Regardless of the term "may" in the General Order, "every member of the agency, regardless of rank, shall treat an order or a request from a member of

the internal affairs function as if the order or request came directly from the law enforcement executive." IAPP § 4.1.5 (emphasis added).[1]

VII. Even if L.T. has an expectation of privacy, it is one that is not reasonable under the Fourth Amendment

Regarding NA's Fourth Amendment argument, our Supreme Court "continues to believe that telephone billing records . . . disclose private information that is entitled to constitutional protection" State v. Lunsford, 226 N.J. 129 (2016), however, "circumstances will arise that justify intrusion upon that interest." State v. McAllister, 184 N.J. 17, 33 (2005). "[T]he remaining question is the measure of protection that [the courts] should afford a person's privacy interest . . . in view of law enforcement's legitimate investigatory needs." Ibid.

The personal billing records ordered by the IAU passes constitutional muster pursuant to a recognized exception to the warrant requirement: administrative searches of pervasively regulated industries pursuant to a substantial government interest. The Supreme Court explained, "[t]he pervasively regulated industry exception to the warrant requirement has generally been applied to businesses that have a 'long tradition of close government supervision.'" N.J. Transit, 151 N.J. at 545 (quoting Marshall v. Barlow's Inc., 436 U.S. 307, 313 (1978)). The Court noted that both New Jersey and federal courts have found that people who work in industries "subject to close supervision and inspection," have a diminished expectation of privacy. Ibid. New Jersey has applied this administrative search exception in several closely regulated industries.[2]

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[1] See, e.g., O'Shea, 410 N.J. Super. at 383 ("The word "shall" is generally considered to connote mandatoriness.") (citing State v. Thomas, 188 N.J. 137, 150 (2006)).

[2] New Jersey has applied this administrative search exception in several closely regulated industries. See State v. Williams, 84 N.J. 217, 223, (1980) (liquor industry); State v. Hewitt, 400 N.J. Super. 376, 381 (App. Div. 2008) (commercial trucking); State v. Turcotte, 239 N.J. Super. 285, 291-97, (App. Div. 1990) (horse racing); State v. Rednor, 203 N.J. Super. 503, 507, (App. Div. 1985) (pharmaceutical industry).

NA is correct in its assertion that individuals do not lose Fourth Amendment rights merely because they work for the government instead of a private employer, however, the "reasonableness of an expectation of privacy, as well as the appropriate standard for a search, is understood to differ according to context." O'Connor v. Ortega, 480 U.S. 709, 715 (1987). Public employees' expectations of privacy "may be reduced by the virtue of actual office practices and procedures, or by legitimate regulation." Id. at 717. See, e.g., State v. Hemenway, 239 N.J. 111, 129 (2019) (explaining the special needs doctrine has extended to public employer work-related searches given the "realties of the workplace which strongly suggest that a warrant requirement would be unworkable").

A non-criminal investigative search will be reasonable if, at its inception, "there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct." O'Connor, 480 U.S. at 726. The measures adopted have to also be "reasonably related to the objectives of the search and not excessively intrusive in light of the nature of the misconduct" Ibid. (quoting New Jersey v. T.L.O., 469 U.S. 325, 342 (1985)). The Supreme Court explained the lower standard is appropriate for work-related investigations because "[p]ublic employers have an interest in ensuring that their agencies operate in an effective and efficient manner, and the work of these agencies inevitably suffers from the inefficiency, incompetence, mismanagement, or other work-related misfeasance of its employees." Id. at 724. It emphasized that, "in many cases, public employees are entrusted with tremendous responsibility, and the consequences of their misconduct or incompetence to both the agency and the public interest can be severe." Ibid.

The "reasonableness" of a claim for intrusion has both a subjective and objective component. State v. Sloane, 193 N.J. 423, 434 (2008). Whether an employee has a

reasonable expectation of privacy in his particular work setting "must be addressed on a case-by-case basis." O'Connor, 480 U.S. at 718. He must establish both 'an actual (subjective) expectation of privacy,' and 'one that society is prepared to recognize as reasonable.'" State v. Evers, 175 N.J. 355, 369 (2003) (quoting Katz v. United States, 389 U.S. 347, 361 (1967); see also State v. Taylor, 440 N.J. Super. 515, 523 (App. Div. 2015) (societal norms dictate whether an expectation of privacy exists and if it is reasonable).

NA cannot adequately conclude L.T.'s expectation of privacy was reasonable. The courts have held "the need for oversight and corrective action is particularly acute in police departments," Gwynn v. City of Phila., 719 F.3d 295, 303 (3d Cir. 2013), and therefore "the police industry is probably the most highly regulated, with respect to performance of its employees, of any industry in New Jersey." Policeman's Benevolent Ass'n, Local 318 v. Washington, 850 F.2d 133, 121 (3d Cir. 1988); see N.J. Transit Pba Local 304 v. N.J. Transit Corp., 290 N.J. Super. 406, 423 (App. Div. 1996) (state law holding similarly). See Lehrhaupt v. Flynn, 140 N.J. Super. 250, 261 (App. Div. 1976) (individual's right of privacy "may be limited by virtue of the legitimate right of the public to acquire knowledge of all facts relevant to the performance . . . of its public officials.")

Prior to opening this investigation, L.T. acknowledged the General Order by his signature, and as a Captain, he was required to maintain knowledge of the policy. As a department policy, any change made to the CPP or any new General Order, L.T. was required to review and sign. There have been multiple adaptations to the CPP and new General Orders since L.T. first signed, and therefore with each issuance he had multiple opportunities to understand the rules regarding personal cell phone use. As provided in the policy, billing records may be investigated. There is

no indication L.T. did not understand the policy. If L.T. did not want to be subjected to its conditions, he had the option not to use his personal phone.

As described in the IAPP, notices, such as General Order 18 explaining legitimate regulations regarding employee conduct, disintegrates an expectation of privacy to one that is no longer reasonable. Given his status as Captain, L.T. should have also been aware of other department practices, such as the IAU investigating misconduct, and the procedures for which the agency does so.

Based on the policy, such phone usage if true, is "for improper purposes." The policy requires violations to be reported, which cannot be disregarded as an idle gesture, but is one that intends to trigger an investigation to determine if the offending employee needs to be disciplined. Here, the reports of improper phone use were not merely gossip, but based on credible, first-hand information which was shared to IAU from other officers and was reinforced by the evidence the IAU's investigation revealed thus far. In viewing surveillance videos on the day of the alleged tweet, the same car provided to L.T. was viewed on the street where the alleged picture was taken. L.T. admitted he usually takes pictures of traffic similar to the one posted on the account to inform friends and family of traffic patterns. Although he could not remember taking the picture, he admitted the date may correlate to the day he dropped his children off at his mother's house on Charles Street. Regardless of the anonymity of the Twitter account, the expectation of privacy was unreasonable under the facts of the case. See State v. M.A., 402 N.J. Super. 353, 369 (App. Div. 2008) ("Obviously . . . a "legitimate" expectation of privacy by definition means more than a subjective expectation of not being discovered.") (quoting Rakas v. Illinois, 439 U.S. 128, 134 (1978) (internal citations omitted)).

Further, the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive. To be sure, courts are required to balance the interests and "look in particular to the level of detail contained in the materials requested." Lyndhurst, 229 N.J. at 580. "More detailed disclosures" present greater [constitutional] concerns." Ibid.

NA's contention that the search is intrusive is undercut by L.T. conceding, and NA acknowledging, "the billing records would not include a record of texts or any attachments that are added to outcoming or incoming messages." After discussing with his phone carrier, L.T. acknowledged again, the only information provided is the caller's phone number, duration of the call, start and end time of the call, and the cell phone tower the phone was connected to." NA cannot reasonably contend this appeal is an attempt for the Town to retain bulk data about the personal phone use of all its officers under the NA. Rather, the request is confined to one officer, whom the IAU has investigated and discovered evidence to corroborate L.T. as a person of interest. Here, there is evidence of improper use. This does not relate to any officer using a personal cell phone while on duty. The request is limited to one day, and directly related to the date of the photo. The request is tailored even further to only the time L.T. was on-duty. Though NA adamantly asserts this information will not lend anything to further the investigation, the judgment of NA does not properly foreclose the IAU's investigation to determine otherwise.

The investigation into L.T.'s conduct was work related; it was not a criminal investigation. The IAU had reasonable grounds to investigate misconduct in view of the formal complaint made to Internal Affairs. The privacy interest of L.T. is not as significant as the Town's interest to determine violations of workplace discrimination and harassment. Although an adverse determination may result in termination, no officer has the right to violate its employer's policy, and then assert a privacy interest as a barrier to review that

violation. More importantly, an officer who is unwilling to abide by its employer's policies, and communicates these ideas in such a public manner, has no right to remain in the position. Viewing the billing records is not unreasonable pursuant to the New Jersey Constitution, in light of the officers' decreased expectation of privacy, adequate limitations on the obtrusiveness of the order, and awareness of the workforce policies warning of such investigations. There is no violation of the Fourth Amendment.

VI. As many other regulated industries, required disclosure of workplace violations do not amount to an agency violating an individual's privacy

In an attempt to persuade the court, NA argues the records have "independent privacy protections apart from L.T.'s constitutional search and seizure rights." The privacy rights of others are at stake, because the record will disclose private "relationships of who called who." The fear of public disclosure of private relationships is dispelled by the IAU policies requiring confidentiality of the investigative case files. With limited exceptions, the IAU records are only accessible to IAU personnel, the law enforcement agency executive, and the county prosecutor. The progress of internal affairs investigations, the contents of the case file including the original complaint, and the resulting materials are confidential information and are only shared in limiting circumstances. See, e.g., IAPP § 9.6.2.

NA further argues, though hypothetical at this point in the investigation, that because of the required agency reporting, L.T.'s personal information will be shared. However, "[officers] obviously cannot prevail on an argument that before the officers decided to engage in the misconduct that would result in discipline, they counted on their discipline remaining confidential." In re Atty. Gen. Law Enf't, 465 N.J. Super. at 151-152. Yet, in support of its belief, NA cites North Jersey Newspapers Co. v. Passaic Cnty. Bd. of Chosen Freeholders to assert the Right to Know Law does not require the release of telephone records of public

officials due to the expectation of privacy in telephone communications. 127 N.J. 9, 20 (1992). The proposition is correct, but its application in this analysis is erroneous. L.T.'s telephone records are not being released to the public. Rather, the IAPP requires each law enforcement agency to annually publish on its public website a statistical report "summarizing the types of complaints received and the dispositions of those complaints." AG Directive 2020-5 at 3-4 (amending 2019 IAPP § 9.11.1). For complaints in which an officer was terminated, received a reduction in rank or grade, or was suspended for more than five days, AG Directive 2020-5 requires that the identity of the officer be revealed, along with a brief summary of the offense and the sanction imposed. Id. at 4 (amending 2019 IAPP § 9.11.2). See also IAPP § 9.11.3 (explaining agencies cannot, in IAU investigations, enter into plea or settlement agreements concerning the content of a synopsis subject to public disclosure in "regard[s] [to] the identities of officers subject to final discipline, summaries of transgressions, or statements of the sanctions imposed").

Under N.J.A.C. 4A:2-2.3, an employee may be subject to major discipline for "conduct unbecoming a public employee," "discrimination that affects equal employment opportunity, including sexual harassment," and "other sufficient cause." N.J.A.C. 4A:2-2.3(6), (9), (12). "Disclosing the names of law enforcement officers who have received major discipline is obviously rationally related to the Attorney General's goal of increasing transparency of internal affairs and officer discipline in the State's law enforcement agencies, thereby making them more accountable to the communities they serve." In re Atty. Gen. Law Enf't Directive Nos. 2020-5 & 2020-6, 465 N.J. Super. 111, 158 (App. Div. 2020). The threat that the investigation would confirm a violation which would then be made public, is not

only a hypothetical fear at this point in the investigation, but it is one that cannot be used in support of discontinuing the investigation altogether.

VI. The First Amendment does not afford protection to a public employee whose speech is not on a matter of public concern

NA's contention that the Twitter user is afforded First Amendment protections, and by investigating, the IAU is attempting to "chill internet speech" hardly contains a meritorious argument that would afford NA the reasonable probability it needs to establish in order for this court to afford injunctive relief.

NA denies L.T. is the author of the tweets, therefore any argument pertaining to his First Amendment rights and the harm the investigation will cause, is speculative. Even if L.T. is the author, he must prove he spoke as a citizen on a matter of public concern. Borough of Duryea v. Guarnieri, 564 U.S. 379, 386 (2011) (citing Connick v. Myers, 461 U.S. 138, 147 (1983)). A lawsuit that seeks to advance interests personal to the plaintiff will not satisfy the public concern requirement. Lapolla v. Cnty. of Union, 449 N.J. Super. 288, 308 (App. Div. 2017). Therefore, when the speech "involves nothing more than a complaint about a change in the employee's own duties" it does not relate to a matter of public concern and accordingly "may give rise to discipline without imposing any special burden of justification on the government employer." Guarnieri, 564 U.S at 399; see United States v. Nat'l Treasury Emps. Union, 513 U.S. 454, 466 (1995) (observing "employee comments on matters related to personal status in the workplace" do not fall within the category of protected speech). The reasonable probability of success on the free speech claim is implicated by the fact that the PD is a government employer, and L.T.'s tweets are not a matter of public concern.